



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 11-42, 03-109, 12-23, and CC Docket No. 96-45; FCC 12-11]

Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks further focused comment on a number of issues related to the Lifeline program, including establishing an eligibility database, advancing broadband availability through digital literacy training, limiting section 251 resale of Lifeline-supported services, establishing a permanent support amount for voice service support, reforming Lifeline and Link Up support on Tribal lands, adding Women, Infants and Children (WIC) to the list of qualifying programs for Lifeline, establishing eligibility for homeless veterans, determining whether ETCs should be required to apply the Lifeline discount on all of their voice and data packages, examining whether the Commission should further clarify the own facilities requirement, determining whether ILECs should have the ability to opt out of the Lifeline program as well as whether the record retention requirement should be lengthened from three years to ten years.

DATES: Comments are due **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** reply comments are due **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 11-42, 03-109 , 12-23, and CC Docket No. 96-45; FCC 12-11, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly Scardino, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 11-42, 03-109, 12-23, and CC Docket No. 96-45; FCC 12-11, adopted January 31, 2012 and released February 6, 2012. There was also a companion document released with this item. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
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I. INTRODUCTION

1. In this Order, we comprehensively reform and begin to modernize the Universal Service Fund's Lifeline program (Lifeline or the program). Building on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), proposals in the National Broadband Plan, input from the Government Accountability Office (GAO), and comments received in response to the Commission's

March Notice of Proposed Rulemaking, the reforms adopted in this Order substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). We take these significant actions, while ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the network will have the opportunity to benefit from the numerous opportunities and security that telephone service affords.

2. This Order is another step in the Commission's ongoing efforts to overhaul all USF programs to promote the availability of modern networks and the capability of all American consumers to access and use those networks. Consistent with previous efforts, we act here to eliminate waste and inefficiency, increase accountability, and transition the Fund from supporting standalone telephone service to broadband. In June 2011, the Commission adopted the Duplicative Program Payments Order, 76 FR 38040, June 29, 2011, which made clear that an eligible consumer may only receive one Lifeline-supported service, established procedures to detect and de-enroll subscribers receiving duplicative Lifeline-supported services, and directed the Universal Service Administrative Company (USAC) to implement a process to detect and eliminate duplicative Lifeline support—a process now completed in 12 states and expanding to other states in the near future. Building on those efforts, the unprecedented reforms adopted in today's Order could save the Fund up to an estimated \$2 billion over the next three years, keeping money in the pockets of American consumers that otherwise would have been wasted on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

3. These savings will reduce growth in the Fund, while providing telephone service to consumers who remain disconnected from the voice networks of the twentieth century. Moreover, by using a fraction of the savings from eliminating waste and abuse in the program to create a broadband pilot program, we explore how Lifeline can best be used to help low-income consumers access the

networks of the twenty-first century by closing the broadband adoption gap. This Order complements the recent USF/ICC Transformation Order, 76 FR 76623, December 8, 2011, which reoriented intercarrier compensation and the high-cost fund toward increasing the availability of broadband networks, as well as the recently launched “Connect to Compete” private-sector initiative to increase access to affordable broadband service for low-income consumers.

4. To make the program more accountable, the Order establishes clear goals and measures and establishes national eligibility criteria to allow low-income consumers to qualify for Lifeline based on either income or participation in certain government benefit programs. The Order adopts rules for Lifeline enrollment, including enhanced initial and annual certification requirements, and confirms the program’s one-per-household requirement. The Order simplifies Lifeline reimbursement and makes it more transparent. The Commission adopts a number of reforms to eliminate waste, fraud and abuse in the program, including creating a National Lifeline Accountability Database to prevent multiple carriers from receiving support for the same subscribers; phasing out toll limitation service support; eliminating Link Up support except for recipients on Tribal lands that are served by eligible telecommunications carriers (ETCs) that participate in the high-cost program; reducing the number of ineligible subscribers in the program; and imposing independent audit requirements on carriers receiving more than \$5 million in annual support. These reforms are estimated to save the Fund up to \$2 billion over the next three years. As part of these reforms, we establish a savings target of \$200 million in 2012 versus the program’s status quo path in the absence of reform, create a mechanism for ensuring that target is met, and put the Commission in a position to determine the appropriate budget for Lifeline in early 2013 after monitoring the impact of today’s fundamental overhaul of the program and addressing key issues in the FNPRM, including the appropriate monthly per-line support for the program. Using savings from the reforms, the Order establishes a Broadband Adoption Pilot Program to test and determine how Lifeline can best be used to increase broadband adoption among Lifeline-eligible consumers. We also establish an interim base of uniform support amount of \$9.25 per month for non-Tribal subscribers to simplify program

administration.

II. FURTHER NOTICE

A. Eligibility Database

5. We conclude that establishing a fully automated means for verifying consumers' initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs. We conclude that it is important to speed-up adoption of a widespread, automated means of verifying program eligibility. We therefore direct the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline. To ensure that the Commission has sufficient information to implement such a solution, we seek focused comment on issues in a FNPRM. The Commission directs the Bureau to reach out to the relevant federal agencies (e.g., HHS and Agriculture) and their state counterparts to determine whether and to what extent program eligibility information can be shared among agencies.

B. Digital Literacy

6. To support broadband adoption, the FNPRM seeks comment on dedicating a certain amount of USF funding for four years to support formal digital literacy training for consumers at libraries and schools across the United States. The Commission also seeks comment on its statutory authority to use USF funds for this purpose.

C. Resale

7. The FNPRM proposes that only ETCs who provide Lifeline directly to subscribers will be eligible to receive reimbursement from the Fund. Moreover, the FNPRM proposes that the entity with the relationship with the end-user be required to populate the duplicates database with the necessary

subscriber information. As an alternative to the foregoing proposals, the FNPRM proposes forbearing from the incumbent LECs' resale obligation under section 251(c)(4).

D. Lifeline Support Amounts for Voice Service

8. The FNPRM seeks comment on number of issues, including whether to continue with a flat-rate of reimbursement, and if, so, whether the current interim \$9.25 per line support amount should be made permanent. The FNPRM also seeks comment on and information for a demand estimation study to determine the effect of different support amounts on demand for the program.

E. Tribal Lands Support

9. The FNPRM seeks comment on whether to adopt a rule permitting eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household (e.g., a household would be permitted to “split” their Lifeline discount between a wireline and a mobile phone service or between two mobile services and receive a discount off of the cost of each service). The FNPRM seeks comment on how such a rule could be administered, including ways to prevent waste, fraud, and abuse if this rule is adopted. In addition, the FNPRM seeks comment on whether the Link Up program for residents of Tribal lands is currently implemented effectively, or whether the program should be altered or eliminated given the recent reforms in high-cost support, including establishment of the Tribal Mobility Fund.

F. WIC

10. The FNPRM seeks comment on whether to include the Supplemental Nutrition Assistance Program for Women, Infants and Children, administered by the Department of Agriculture, as a program conferring Lifeline eligibility upon participants.

G. Homeless Veterans Programs Inclusion for Purposes of Eligibility

11. The FNPRM seeks comment on measures that would enable veterans who lack any income (and therefore cannot document whether their income is below the income-based program

threshold) but are not otherwise enrolled in a qualifying program, to demonstrate eligibility for Lifeline. The FNPRM asks whether additional measures should be implemented to ensure program access while limiting waste, fraud and abuse in situations where an eligible veteran has no documentation of income.

H. Mandatory Application of Lifeline Discount to Bundled Service Offerings

12. The FNPRM seeks comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component. The FNPRM also seeks comment on whether there should be any limitations on this requirement (e.g., should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband, such as video).

I. “Own Facilities” Requirements

13. The FNPRM seeks further comment on whether the Commission should consider any additional requirements for a carrier to receive support if that carrier does not own network assets or meet the requirements of section 214(e)(1)(A). Specifically, the FNPRM seeks comment on whether the Commission should amend its rules to clarify the term “combination of its own facilities” with respect to the facilities a carrier must own and use to provide USF supported services. The FNPRM also asks for comment on whether there should be a minimum combination of facilities that the carrier should own and use in order to qualify as a facilities-based ETC under section 254(e)(1)(A).

J. Eligible Telecommunications Carrier Requirements

14. The FNPRM seeks comment on whether incumbent LECs can choose whether to participate in the Lifeline program. In addition, the FNPRM seeks comment on whether the program should move to a voucher-based system.

K. Record Retention Requirements

15. The FNPRM proposes to amend the current three year record retention requirement to a ten year requirement.

III. PROCEDURAL MATTERS

A. Filing Requirements

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

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large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

B. Paperwork Reduction Act Analysis

17. The Further Notice of Proposed Rulemaking (FNPRM) contains proposed new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. The proposed requirements will be submitted to the Office of Management and Budget (OMB). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the OMB, general public, and other Federal agencies to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Initial Regulatory Flexibility Analysis

18. As Required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rulemaking:

19. The FNPRM seeks comment on a variety of issues relating to the comprehensive reform and modernization of the Universal Service Fund’s Lifeline program. As discussed in the Order accompanying the FNPRM, the Commission believes that such reform will strengthen protections against

waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; modernize the program for broadband; and constrain the growth of the program. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

20. This FNPRM is one of a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs. In this FNPRM, we propose and seek comment on comprehensive reforms to the universal service low-income support mechanism.

21. Specifically, we propose and seek comment on the following eight reforms and modernizations that may be implemented in funding year 2012 (July 1, 2012 – June 30, 2013).

22. In the FNPRM, we recommend the creation of a centralized database for online certification and verification on Lifeline consumers' eligibility to participate in the low-income program. In the FNPRM, we seek comment on the methods of creating the database including whether, how, and with what information ETCs should populate the eligibility database.

23. Additionally, we seek comment on establishing a digital literacy training program, and specifically, we seek comment on what entities are best suited to provide such training (*i.e.*, schools and libraries), including ETCs.

24. As part of the effort to reduce waste, fraud, and abuse in the program, the Commission proposes to allow only ETCs with a direct relationship with the end-user Lifeline subscriber to seek reimbursement from the Fund. In addition we propose that the ETC with the direct relationship with the end-user be responsible for populating the duplicates database. How would this proposal affect entities economically? We seek comment on the matter. We seek comment on procedures that should be

implemented to ensure that Lifeline wholesalers are not seeking Fund reimbursement for resold Lifeline offerings including self-certification, record keeping, and audit requirements. We also seek comment on which ETC, the wholesaler or the reseller, should be responsible for complying with the other certification and verification requirements in the Order. Compliance with the proposed rule would require current Lifeline resellers who are not designated ETCs to either (1) obtain ETC designation or (2) purchase Lifeline for resale at wholesale rates and be prevented from seeking Fund reimbursement. As an alternative, we seek comment on whether the Commission should forbear, on its own motion, on incumbent LECs' obligation to resell Lifeline services. In addition, we seek comment on how, if at all, incumbent LECs would be required to amend tariffs to separate the amount of the Lifeline subsidy from the wholesale price of the underlying Lifeline service being resold. We seek further comment on how the proposed rule would impact existing contractual relationships between incumbent LECs and Lifeline resellers.

25. In the Order, we establish an interim amount of \$9.25 per month for Lifeline reimbursement. In the FNPRM, we seek comment on whether the interim reimbursement amount of \$9.25 is appropriate and should be made permanent. We also seek comment on how to best determine a flat rate of reimbursement. In furtherance of that, we seek comment on the best method of obtaining the necessary information to perform a demand estimation study. Finally, we seek comment on whether the discount should be reduced over time as voice becomes a secondary application compared to broadband service.

26. In the FNPRM, we seek comment on whether to adopt a rule permitting eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household (e.g., a household would be permitted to “split” their Lifeline discount between a wireline and a mobile phone service and receive a discount off of the cost of each service). The Commission seeks comment on how such a rule could be administered and how to prevent waste, fraud, and abuse if this rule is adopted.

27. The Commission seeks comment in the FNPRM on whether to include three additional programs in its eligibility criteria: the Supplemental Nutrition Assistance Program for Women, Infants and Children, administered by the Department of Agriculture; the Veterans Benefits Administration-Veterans Health Administration Special Outreach and Benefits Assistance program; and the Healthcare for Homeless Veterans program.

28. The Commission seeks comment regarding mandatory application of the Lifeline discount to bundled service offerings. Specifically, we seek comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component and whether there should be any limitations on this requirement. We ask whether there should be limitations on this potential requirement, should such a rule be adopted. Should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband? We also seek comment on various implementation issues regarding any such rule (i.e., would Lifeline subscribers face loss of voice service based on their inability to pay the entirety of a bundled service bill; can carriers limit Lifeline consumers' use of premium services).

29. Finally, we propose to update our rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, from three years to at least ten years, because the current requirements are inadequate for purposes of litigation under the False Claims Act.

B. Legal Basis

30. The Further Notice of Proposed Rulemaking, including publication of proposed rules, is authorized under sections 1,2, 4(i)-(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, and 1302.

C. Description and Estimate of the Number of Small Entities to which the Proposed

Rules Will Apply:

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

1. Wireline Providers

32. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have

1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

33. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

34. Interexchange Carriers. Neither the Commission nor the SBA has developed a small

business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

35. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede 2002 Census data, show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

36. Local Resellers. The SBA has developed a small business size standard for the category

of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

37. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

38. Pre-paid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling

cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

2. Wireless Carriers and Service Providers

39. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

40. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

41. Wireless Communications Services. This service can be used for fixed, mobile,

radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

42. Satellite Telecommunications Providers. Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

43. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

44. The second category, i.e. “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over

Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

45. Common Carrier Paging. The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of “Paging” “that is classified under the seven-number North American Industry Classification System (NAICS) code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for

the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

46. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the 2008 Trends Report, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

47. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

Requirements

48. Tribal Lands Lifeline Support. If we permit eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household, postpaid carriers may need to update their billing systems to reflect that more than one supported service may be received per Tribal household. Additionally, several carriers currently allow consumers to apply their Lifeline discount to the purchase of family shared calling plans, and, if such a rule were adopted, a similar billing functionality could be used by postpaid carriers serving eligible residents of Tribal lands. The Commission is continuing to evaluate the potential costs and benefits of this proposal and will take the steps necessary to mitigate the costs to small businesses.

49. Mandatory Application of Lifeline Discount to Bundled Service Offerings. The FNPRM seeks comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component. The FNPRM also seeks comment on whether there should be any limitations on this requirement (e.g., should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband, such as video). While we do not anticipate that these proposals will have an impact on small businesses at this time, we recognize that small entities may incur costs due to a need to update their internal systems to comply with the rule.

50. Record Retention Requirements. The Commission proposes to amend § 54.417 of the Commission's rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, from three years to at least ten years. ETCs will continue to maintain documentation of consumer eligibility for at least ten years and for as long as the consumer receives Lifeline service from that ETC, even if that period extends beyond ten years. The amended recordkeeping requirement will continue to apply equally to all ETCs, all of whom are currently required to maintain Lifeline documentation, including subscriber-specific eligibility documentation, for at least three years.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

51. Eligibility database. For the period prior to the implementation of a national eligibility database, in the FNPRM we consider the alternative of having third-party administrators, as opposed to the ETCs, be responsible for verifying Lifeline consumers' eligibility in the program. Accordingly, we seek comment on how to minimize or mitigate extra costs to the Fund caused by the selection of third-party administrators.

52. Limitations on the Resale of Lifeline-Supported Services. As part of the effort to reduce waste, fraud, and abuse in the program, the Commission proposes to allow only ETCs with a direct relationship with the end-user Lifeline subscriber to seek reimbursement from the Fund. To the extent that a reseller who is not an ETC is receiving support from the Fund, there could be an economic impact should this change be adopted, but the Commission believes that the need to protect the Fund from abuse outweighs any concerns with existing carriers raising concerns with the economic impact of the proposed rule. Furthermore, if there is an economic impact from this proposal, we seek comment on how to minimize the burdens of such a requirement on small entities. Accordingly, we seek comment on the potential economic impact of these requirements.

F. Federal Rules that May Duplicate or Conflict with Proposed Rules

53. None.

IV. ORDERING CLAUSES

54. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, this Further Notice of Proposed Rulemaking is ADOPTED.

55. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

56. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Further Notice of Proposed Rulemaking to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

57. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Bulah P. Wheeler,
Deputy Manager.

Proposed rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54 - UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Revise § 54.417 to read as follows:

§ 54.417 Recordkeeping requirements

Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for the ten full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.409(d) and 54.410(b)(3) for as long as the consumer receives Lifeline service from that eligible telecommunications carrier.

[FR Doc. 2012-5142 Filed 03/01/2012 at 8:45 am; Publication Date: 03/02/2012]